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No. 86-981

IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

MAJOR MEDIA OF THE SOUTHEAST, INC., d/b/a
NAEGELE OUTDOOR ADVERTISING CO. OF RALEIGH-DURHAM,
Petitioner,

v.

CITY OF RALEIGH,
Respondent.

BRIEF IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

THOMAS ALEXANDER MCCORMICK
Counsel of Record
City Attorney
City of Raleigh
P.O. Box 590
222 W. Hargett Street
Raleigh, N.C. 27602
(919) 890-3060
Attorney for Respondent

PRESS OF BYRON S. ADAMS, WASHINGTON, D.C. (202) 347-8203

QUESTION PRESENTED

Whether an ordinance that allows off-premise sign businesses, the placement of new off-premise signs without regard to their content, and the replacement of existing nonconforming off-premise signs with conforming off-premise signs without regard to the content of the sign's copy, but requires the removal of some nonconforming signs after an amortization period of 5 1/2 years, constitutes a taking of property without just compensation or a denial of due process in violation of the Fifth and Fourteenth Amendments.

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STATEMENT

In 1979 the City of Raleigh, hereinafter referred to as "Raleigh", amended its sign regulations by enacting ordinances regulating on-premise signs and off-premise signs. C.A. App. 369. Because of what appeared to be a proliferation in number and an increase in size of signs during 1982 and 1983 Raleigh amended its off-premise sign regulations on October 18, 1983, C.A. App. 405. The amendments to the off-premise sign ordinance generally decreased the allowed size of off-premise signs, restricted them to Industrial-I and Industrial-II zoning areas, and increased the spacing between signs. Because they are too large in area or too closely spaced, most of Petitioner's, hereinafter

"Naegele", signs were made nonconforming. Except for the 81 sign structures containing approximately 170 signs located on Federal Aid Primary Roads and protected by the Highway Beautification Act, 23 U.S.C. 131, Naegele's nonconforming signs must be removed at the expiration of a 5 1/2 year amortization period. C.A. App. 405. Naegele may, of course, install new signs complying with the ordinance at any time.[1] The parties have stipulated that the City does not regulate the content of Naegele's signs. J.S.F. #21, C.A. App. 46.

The off-premise sign ordinance was adopted pursuant to public hearing at which testimony regarding the issues of traffic safety and esthetics was heard. C.A. App. 298-301, 317-327. Investigation was made of other amortization provisions, including Raleigh's own existing on-premise sign ordinance, to discover a fair period which had been upheld by the courts, C.A. App. 292.[2]

Raleigh's off-premise sign regulations are a valid exercise of its police power and contrary to Naegele's gross misstatement on page 6 of its petition, the Court of Appeals did not find the effect of the ordinance to be "devastating". That characterization is Naegele's and Naegele's alone.

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[1] On October 22, 1986, the Raleigh City Council held a public hearing on proposed amendments to its on-premise sign regulations which, inter alia, would implement a 5 1/2 year amortization period for nonconforming on-premise signs.

[2] The on-premise sign ordinance, §10-2065.6 Raleigh City Code, contains a ninety (90) day amortization provision for certain on-premise signs. App., infra, 5a. This provision was held constitutional by the North Carolina Courts. *Goodman Toyota v. City of Raleigh*, 64 N.C. App. 660, 306 S.E. 2d 192 (1982) (pet. for discretionary review denied 310 N.C. 477).

The City of Raleigh has enacted an ordinance that does not destroy Naegele's business. Raleigh still permits off-premise signs without regard to their content. Pet. App. 30, 31, App. infra 6a. The only differences between the new regulations and the old are that a fewer number of signs will be permitted and those will be smaller in size.

THE LITIGATION

On July 17, 1984 Naegele brought this action in the United States District Court for the Eastern District of North Carolina. In its Complaint, Naegele alleged violations of the First, Fifth and Fourteenth Amendments to the Constitution. After discovery, Naegele moved for summary judgment on first amendment grounds. Raleigh moved for summary judgment on all issues. Pet. App. 18a. Naegele's Fifth amendment claim contended that the Raleigh amortization plan forced a removal of private property for a public purpose without payment of compensation. Naegele's Complaint alleged, inter alia, that:

> 25. This forced removal or abatement of use of its billboards constitutes taking of its property without just compensation and impairment of the obligations under its various contracts. The total effect of the scheme of the Code is to destroy the business of Naegele, not merely in the specific location of a particular sign, but its business throughout the City of Raleigh, the whole metropolitan area and beyond. For this taking there is to be no compensation.

Amended Complaint ¶25 C.A. App.[3]

The District Court rejected Naegele's Fifth Amendment Takings Clause claim. The Court heard no evidence from Naegele on that claim because Naegele chose not to present any evidence in spite of its burden to do so pursuant to the Federal Rules of Civil Procedure and in spite of the fact that Raleigh had raised the issue on summary judgment and had presented evidence regarding value and appropriate amortization periods. The plain language of Rule 56(c) of the Federal Rules of Civil Procedures mandates the entry of judgment against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case and on which that party will bear the burden of proof at trial. There is no express or implied requirement in Rule 56 that the moving party support its motion with affidavits or other materials negating the opponent's claim although, in this case, Raleigh did just that. Even if Raleigh had only raised the issue and presented no evidence on the amortization question, Naegele was still obligated to come forward with a response other than the mere conclusionary allegations of the Complaint. See *Celotex Corporation v. Myrtle Nell Catrett, administratrix of the estate of Louis H. Catrett, deceased,* 106 S. Ct. 2548.

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[3] Interestingly enough, and in spite of the Petitioner's claims, there have been erected since the enactment of the regulations in question, at least five new billboards which conform in every way to the new regulations.

REASONS FOR DENYING THE PETITION

A. THE RALEIGH BILLBOARD ORDINANCE DOES NOT WORK A REGULATORY TAKING OF NAEGELE'S PROPERTY IN VIOLATION OF THE TAKINGS CLAUSE.

Raleigh's ordinance in no way works a taking of any of Naegele's property.[4]

It is clearly settled in North Carolina and the majority of jurisdictions that amortization is a legal and effective method for the removal of nonconforming uses. There can be no question as to the validity of the process. See *State v. Joyner*, 286 N.C. 366, 21 S.E. 2d 320, appeal dismissed 422 U.S. 1002, 95 S. Ct. 2618, 45 L. Ed 2d 666 (1975).

An amortization provision is the proper subject for a grant of summary judgment. See *Donrey Communications Company, Inc. v. City of Fayetteville, Arkansas*, (cert. denied), 466 U.S.959, 80 L.Ed 2d 555, 104 S. Ct. 2172, (1984). Same case below, 280 Ark 408, 660 S.E. 2d 900 (1983). In *Donrey*, the United States Supreme Court refused to grant certiorari to hear an appeal from a summary judgment granted on behalf of the City of Fayetteville and sustaining, inter alia, a smaller billboard than that allowed in Raleigh and a shorter, four year, amortization requirement. Since there is no federal zoning law and therefore no federal law of nonconforming uses, the *Donrey* case is as close as we are likely to come in federal "ap-

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[4] Since the passage of the ordinance in October, 1983 and the filing of this lawsuit in July, 1984, the Petitioner company has been sold to a new owner. It is difficult to believe that the new owner bought a business that was "devastated" and could no longer exist in Raleigh.

proval" of amortization.[5] Defendant sincerely hopes that this Court will closely study *Donrey* for its similarity to the Raleigh fact situation and its treatment by the court.

The reasoning behind the utilization of amortization provisions to displace nonconforming uses is well stated by Professor Anderson as follows:

> "Municipalities which seek to terminate nonconforming uses through amortization proceed on the assumption that the public welfare requires that such uses cease, but that summary termination is illegal, impractical or unfair. They find a middle ground, between immediate cessation of use and the indefinite continuance thereof by adopting regulations which permit the nonconforming uses, or some of them to continue for a specified period, but which require them to end the prohibited use upon the expiration of that period. The term 'amortization' is derived

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[5] The Highway Beautification Act as originally written allowed the amortization of billboards by local zoning regulation. 23 U.S.C.S. 134. The courts had the opportunity to rule on this question and upheld the ability of cities to amortize billboards over the five year period set out in the Highway Beautification Act. *Donnelly Advertising Corp. v. Baltimore*, 279 Md. 660, 370 A. 3d 1127 (1970), *Modjeska Sign Studios, Inc. v. Berle*, 55 App. Div. 2d 340, 390 N.Y.S. 2d 945 (1977) rev'd on other grounds 43 N.Y. 2d 468, 402 N.Y.S. 2d 359, 373 N.E. 2d 255, app. dismd. 439 U.S. 809, 58 L. Ed 2d 101, 99 S. Ct. 66.

In 1978 the Billboard Lobby was able to convince Congress to take this right from the states and to require monetary compensation. However, the amortization provision was held constitutional while in effect.

> from the notion that the nonconforming user can amortize his investment during the period of permitted nonconformity. It is reasoned that this opportunity to continue for a limited time cushions the shock of the restriction, dulls the edge of popular disapproval, and improves the prospect of judicial approval."

[1 Anderson, American Law of Zoning, § 6.65, 446-47 (1980)]

In 1974, North Carolina joined the growing majority of states which allow the amortization of nonconforming uses. *State v. Joyner*, supra.

The majority of courts addressing amortization provisions have held those provisions to be valid if reasonable. See Annot., 22 A.L.R. 3d 1134 (1968). See also, *Standard Oil Co. v. Tallahassee*, 183 F. 2d 410 (5th Cir. 1950); *National Advertising Co. v. County of Monterey*, 211 Cal. App. 2d 374, 27 Cal. Rptr. 136 (1962); *Los Angeles v. Gage*, 127 Cal. App. 2d 442, 274 P. 2d 34 (1954); *Eutaw Enterprises, Inc. v. Baltimore*, 241 Md. 686, 217, A. 2d 348 (1966). See also comment, Amortization of Nonconforming Uses, 7 Wake Forest L. Rev. 255 ((1971).

It is interesting to note that one of plaintiff's affiliated companies, Naegele Outdoor Advertising Company of Minnesota, was subjected to a three year amortization period for some of its signs. *Naegele Outdoor Advertising Company of Minnesota v. Minnetonka*, 281 Minn. 492, 162 N.W. 2d 206 (1968).

The amortization provision (§10-2065.6) App., infra 5a, of the defendant's on-premise sign ordinance was upheld by the N.C. Court of Appeals. *Goodman Toy-*

ota v. City of Raleigh, 64 N.C. App. 660, 306 S.E. 2d 192 (1982, pet. for discretionary review denied, 310 N.C. 477). More recently, the North Carolina Courts have sustained a 5 1/2 year billboard amortization period. *Givens v. Town of Nags Head*, 58 N.C. App. 697, 294 S.E. 2d 388 (1982). The Givens case was later appealed to the United States District Court for the Eastern District of North Carolina and subsequently to the United States Court of Appeals for the Fourth Circuit. The Fourth Circuit upheld the amortization provision in an unpublished opinion. *Givens v. Town of Nags Head*, et al., No. 84-1653, (4th Cir. April 2, 1985).

It is sufficient to say that the Constitution has never quaranteed that one may use his property to engage in a particular business. A "taking" in the due process sense is only shorthand for "unreasonable, arbitrary or capricious". A "taking" and a valid exercise of the police power are mutually exclusive concepts absent a physical invasion of the property which justifies the findings of a taking in the eminent domain sense. The real property upon which plaintiff's signs rest remains unfettered for all the other uses available pursuant to the City zoning code. App. infra 1a-4a. No physical invasion of the property has occurred. "By merely entering into a lease specifically for the purpose of erecting a billboard, a lessee is not immunized from regulation of billboards under the police power. *Modjeska Sign Studios v. Berle*, 43 N.Y. 2d 468, 402 N.Y. 2d 359, appeal dismissed, 439 U.S. 809 (1977).

Recovery of investment sufficiently ameliorates private loss. *Joyner, Modjeska*, supra, and 22 A.L.R. 3d 1134. Loss of the expectation of more is not com-

pensable or reason to frustrate a zoning scheme. That is the price of living in an orderly society. To expect a return of the present market value or the market value at the time of the enactment of the ordinance, frustrates changes and improvement (as if the emergence of a better zoning scheme proves that the government was foolish and must pay for that foolishness). The Constitution has never made the government the guarantor of profits or appreciated values, particularly when those values are originally created by the government. See *Agins v. Tiburon*, 447 U.S. 225, 65 L. Ed 2d 106, 100 S. Ct. 2138 (1980).

Naegele indicates through discovery that it has no idea of its investment in sign plant in Raleigh due to the fact that its service area includes some 1,800 sign faces, only about 400 of which are located in Raleigh. C.A. App. at 357. Mr. Pierce, Naegele's President, also indicates that the 1,800 sign faces equates to approximately 900 sign structures. C.A. App. at 357. Exhibit No. 9 to Mr. Pierce's Deposition indicates that the company's sign plant is worth $5,290,190. C.A. App. at 484. When divided by 900, the approximate number of sign structures in all of Naegele's service area, not just Raleigh, a value per sign of some $6,500 results. In addition, these signs may now be depreciated for tax purposes over a five year period. C.A. App. at 362, 518, Dep. p. 64, and 26 U.S.C. 168. This depreciation schedule means that all of the sign plant can be depreciated for tax purposes by the time the amortization period expires.

Additionally, some of the signs rent for $1,330 per month, C.A. App. at 342, while the rent paid to property owners for similar signs is about $100 per month.

C.A. App. at 364. If the sign was a two-faced sign, Naegele could be yielding over $2,600 per month while only paying $100 per month rental. This analysis, although admittedly simplistic, should make it clear that the amortization of a $6,500 investment over 5 1/2 years should not be difficult. Naegele could yield $171,000 in revenue in return for $6,600 rent and $35,000 sign cost.

Exhibit G (relating to painted bulletins, a type of billboard) to plaintiff's response to defendant's First Interrogatories also gives some information regarding the value of the sign in question. C.A. App. at 520-525. For example, that exhibit shows over 80 structures with a value of slightly over $900,000 yielding a per painted bulletin cost (investment) of less than $11,000 per bulletin. Exhibit G also indicates some of the painted bulletins were created as far back as 1956. The same exhibit also indicates that some of the smaller poster panel signs were erected for as little as $250.00.

In summary, Raleigh contends that amortization is reasonable for the following reasons:

1. The 5 1/2 year time limit imposed by the City is the same as that already approved for billboards in *Givens*, supra, and when considered in light of Naegele's investment in the signs as shown by the deposition of Mr. Pierce and the material produced pursuant to interrogatories and motion to produce. Also, this Court has refused to hear the case of *Donrey Communications Company v. City of Fayetteville, Arkansas*. *Donrey* deals with a shorter (4 years) amortization period.

2. §10-2066 of the Raleigh City Code will allow those signs to remain, pursuant to the Federal and State Highway Beautification Acts, which front on Interstate and Federal Aid primary roads. There are approximately 81 of these signs. App. at 506.

3. Plaintiff will be allowed to maintain appropriately sized and spaced displays in Industrial-I and Industrial-II zoning districts even after the expiration of the amortization period. App. at 445. The ordinance does not prohibit the erection of new signs so long as they comply with the ordinance. App. infra 6a.

4. Naegele is engaged in other facets of the sign business and nothing in §10-2066 of the Raleigh City Code would prohibit the maintenance of that business. C.A. App. at 340.

5. Naegele has some 700 sign structures (Pierce Dep. p. 59) located in some 52 cities and communities in North Carolina (Pierce Dep. p. 6). C.A. App. at 340, 357. Naegele's structures, or at least parts of them, may be relocated if removed and could be used in these other areas. C.A. App. at 365. The City of Raleigh has never indicated any intention to physically seize the assets of plaintiff and plaintiff has made no allegation of seizures or offered any evidence of the same.

   In addition, Naegele admits that its signs are of an industry standard in size. C.A. App. at 34. It takes little imagination to realize that these "standard" size signs could easily be placed in one of the over four dozen jurisdic-

tions besides Raleigh where Naegele does business.

6. Many of Naegele's lease agreements contain provisions which relieve plaintiff of obligation under the lease if governmental action should make it no longer legal to maintain a billboard on the premises. C.A. App. at 368, 507-517. Therefore, Naegele is relieved of any responsibility for the property or to the property owner. What has Naegele lost?

7. None of the company's leases show any evidence of recordation as required by N.C.G.S. 47-18 and therefore are of no effect regarding lien holders and purchasers for value. The lack of recordation makes the continuation of the lease at any particular location determinable by the lessor and his desire to do something else with his property. C.A. App. 363, 364. Again, since the private property owner leasing to Naegele could sell or ask Naegele to leave at any time, how is Naegele in any worse position because of the City's regulations?

8. Naegele continued to erect signs and renew leases after the passage of the ordinance (October 18, 1983) and, pursuant to the holding in *Joyner*, supra, is entitled to no amortization of those signs. C.A. App. 352.

9. Naegele will enjoy an essential monopoly position in large billboards for the 5 1/2 year amortization period.

B. THE LOWER COURTS ARE NOT IN DISARRAY OVER THE CONSTITUTIONALITY OF BILLBOARD REMOVAL ORDINANCES.

The overwhelming majority of jurisdictions allow the amortization of nonconforming uses. The best Petitioner can do is cite some contrary state court decisions, most of which were decided on independent state constitutional or statutory grounds. e.g. *French v. City of Appleton*, No. 86 CV 231 (Cir. Ct. Outagamie Co. Sept. 5, 1986). Respondent is unable to find any conflicts on this issue at the Federal Court of Appeals level or indeed, even at the Federal District Court level. As the United States Supreme Court's Supervisory Power is first directed at maintaining uniformity at the Circuit Court level and secondarily perhaps at the District Court level, it is difficult to see why the Court should take its precious time to resolve conflicts where none exist. The United States Supreme Court has had many opportunities over the years to deal with amortization provisions and has uniformly declined to do so. See *Metromedia Inc. v. City of San Diego*, 453 U.S. 490 (1981); *Art Neon Co. v. City and County of Denver*, 488 F. 2d 118 (10th Cir. 1973), cert. denied, 417 U.S. 932 (1974); *Modjeska Sign Studio, Inc. v. Berle*, 43 N.Y. 2d 468, 373 N.E. 2d 255 (1977), appeal dismissed, 439 U.S. 809 (1978); and *State v. Joyner*, 286 N.C. 366, 211 S.E. 2d 320, appeal dismissed, 422 U.S. 1002 (1975).

The *Joyner case*, supra, is important because it is the landmark North Carolina case dealing with amortization. This Court had the opportunity for review but the appeal was dismissed. A case with a fact situation amazingly similar to this case is *Donrey*

Communications Co. v. City of Fayetteville, 280 Ark. 408, 660 S. W. 2d 900 (1983), cert. denied, 466 U.S. 959 (1984). The Fayetteville ordinance dealt with two zoning classifications and a four year amortization period. Again, this Court declined to review.[6]

C. THE REGULATORY CASES PRESENTLY BEFORE THE COURT ARE SO FACTUALLY UNRELATED TO THIS CASE AS TO BE UNUSABLE FOR ANALYSIS OF THE FOURTH CIRCUIT'S DECISION.

The four Takings Clause cases now pending before the Court are not related to the issues in this case. A brief discussion of each case follows:

1. *Keystone Bituminous Coal Ass'n v. Duncan*, No. 85-1092, cert. granted, 106 S. Ct. 1456, (Mar. 24, 1986) (argued Nov. 10, 1986). This case involves a requirement to leave up to 50% of a coal producer's product in the ground in order to support the overlying surface uses of the land. This state law may deprive the owners of the use of their coal and may involve interference with preexisting

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[6] Footnote 15 found at pages 23 and 24 of Petition attempts to describe the rash of billboard related litigation filed recently. It is worth noting that of the federal court cases cited and decided at this writing, all have supported the City's position. *Georgia Outdoor Advertising, Inc., v. City of Waynesville*, No. A-C-86-52 (W.D.N.C. Nov. 14, 1986) and *Primary Media Corp. v. City of Orlando*, No. 86-116-Civ-Orl (M.D. Fla. filed Mar. 7, 1986). In addition, the parties in *National Advertising Co. v. City of Pompano*, No. 86-6466 Civ-Paine (S.D. Fla. filed Apr. 29, 1986) have agreed to a consent decree which provides for a five (5) year removal period for nonconforming billboards. As has been noted infra *French v. City of Appleton*, No. 86 CV 231 (Cir. Ct. Outagamie Co., Sept. 5, 1986) invalidated a city ordinance but was decided on independent state grounds.

contractual rights regarding an estate in land recognized in Pennsylvania and called the subsistence estate. The Raleigh ordinance permits the unfettered use of Petitioner's real property interests for any use allowed in the Industrial-I and Industrial-II zoning classifications. The Industrial classifications are the most liberal in Raleigh and allow any use allowed in the City. App., infra 1a-4a. Certainly allowing such a wide utilization of the property cannot be considered confiscatory. Any restrictions on other uses of the property leased to Naegele is placed thereon by the lessor, not the City of Raleigh.

2. *FCC v. Florida Power Corp.*, No. 85-1658, prob. juris. noted, 160 S. Ct. 2273 (June 2, 1986) (argued Dec. 3, 1986). This case involves the interpretation of a federal statute as it relates to a regulated industry and, more particularly, the actual physical invasion and occupation of the utilities property (its poles). Again, contrast with the Raleigh situation where no physical occupation of Naegele's property occurs.

3. *First English Evangelical Lutheran Church of Glendale v. County of Los Angeles*, No. 85-1199, prob. juris. noted, 106 S. Ct. 3292 (June 30, 1986) (to be argued in January, 1987). This case involves a county ordinance which severely limits the activities a property owner can undertake on its property. Contrast with Raleigh's ordinance which will allow billboards on some of Naegele's property and any other legal use on all of Naegele's property. How can almost total ability to use one's property be compared to the situation in *First English*?

4. *Nollan v. California Coastal Comm'n.*, No. 86-133, prob. juris., noted, 107 S. Ct. 312 (Oct. 20, 1986) (to be argued February, 1987). *Nollan* involves the actual physical invasion and occupation of approximately one third of the property owner's beachfront property, whereas Raleigh's ordinance causes no physical occupation of Naegele's land and no possession of its personal property.

CONCLUSION

The United States Supreme Court should not use its discretion to hear this case. The Court should refuse to exercise its discretion on the following grounds:

1. The Raleigh ordinance is neither a complete nor even a partial ban on billboards. Raleigh's ordinance continues to allow the erection of billboards and on-premise signs with no attempt to control the message content of the signs. Every ordinance regulating or prohibiting the display of billboards is unique. The Raleigh ordinance cannot be a good case to establish precedent for other areas of the country because every ordinance and every fact situation are different.
2. Naegele should not be allowed to escape the consequences of its failure to present any evidence pursuant to its duty under Rule 56 as to the reasonableness of the amortization period. If any evidence exists as to the reasonableness of the period, Naegele has waived any opportunity for the chance to present it.
3. The concept of amortization cannot be questioned. There may or may not exist valid questions as to the length of amortization periods but surely any

governmental body, including the federal government in the original Highway Beautification Act, has the right to bring the operation of nonconforming uses to a halt after some reasonable period of time. To deny otherwise would be to penalize the public and assure the continuation of uses that changing needs, mores and sentiments may deem no longer appropriate.

4. Naegele has lost none of its property. No taking has occurred. Any area in which billboards are now prohibited may still be used for any other use legal under the Raleigh zoning code. Billboards may still be erected in some zoning classifications. Naegele has escape clauses in its leases with property owners which allow Naegele to walk away with no further obligation in the event that governmental regulation prohibits the further display of Naegele's signs at a particular site. C.A. App. 368. Raleigh is only one of fifty-two cities and towns in which Naegele operates. Any nonconforming signs may be moved to another jurisdiction and, in many cases, replaced with a new, conforming sign. Therefore, what property has been taken?

5. The four pending Takings Clause cases bear absolutely no factual relationship to the Naegele case and therefore no constructive guidance could be found by delaying decision on this petition pending resolution of those cases. In short, at the end of the 5 1/2 year amortization period, the company may still operate a sign business displaying exactly the same type of signs; only smaller and spaced a wider distance apart. Such results cannot constitute a taking as envisioned by the U.S. Constitution's Fifth Amendment.

6. There exists no conflict in the decisions of either the Federal Courts of Appeal or the Federal District Courts or the Supreme Court itself regarding the amortization question. Such state court decisions that deny amortization generally do so on an independent state basis.

Respondent respectfully requests the Court to deny the petition.

This the 16 day of January, 1987.

CITY OF RALEIGH, NORTH CAROLINA

THOMAS ALEXANDER MCCORMICK
City Attorney
P.O. Box 590
Raleigh, N.C. 27602
Telephone: (919) 890-3060

APPENDIX

APPENDIX A

RALEIGH CITY CODE

Sec. 10-2046. Industrial I district; use regulations.

In an industrial I district, no use of land or building shall be excluded except the following:

(a) The manufacture of:

(1) Acetylene gas.

(2) Acid.

(3) Ammonia.

(4) Bleaching powder.

(5) Chlorine.

(6) Superphosphate and other phosphate.

(7) Nitrogenous tankage, fish meal, or any fertilizer materials carrying an objectionable odor.

(8) Fertilizer or any other product involving the use of dusty or granular ingredients, unless the manufacturing process and the transfer of the ingredients is carried on under cover or is so screened that the emanation of dust beyond the industrial district is prohibited.

(9) Fireworks or explosives.

(10) Turpentine.

(11) Oil refining, petroleum distillation (excluding oil recycling facilities), hot asphalt plants (excluding bituminous concrete facilities).

(12) Paints, varnish, or shellac which requires distillation or heating of ingredients.

(13) Soap manufactured from animal fats but not from vegetable or mineral oils.

(14) Vinegar.

(b) (1) Storage yard for wrecked, dismantled or partially dismantled automotive vehicles except when approved by the board of adjustment upon findings of fact indicating that:

a. The area is enclosed by a fence.
b. The yard is operated by someone engaged in the wrecker or towing business.
c. The yard is screened by natural objects, plantings, fences or other appropriate means so as not to be visible at any season of the year from any adjacent public street right-of-way or any adjacent property not zoned for industrial use.
d. The yard is used exclusively for vehicle storage and that no parts from stored vehicles are sold at wholesale or retail.

(2) Junkyard or shop for purchase, sale, handling, baling or storage of scrap paper, scrap metals, scrap rubber, broken bottles, or rags, where in the conduct of which establishment these materials are on the premises, except where:

a. The waste consists of scrap metals from industrial plants, created by stamping, punching, milling, lathing, screw machinery, or like manufacturing process, but not by the wear or deterioration of finished products;
b. Storage of materials is in enclosed buildings;
c. The scrap materials are transported in containers, cartons, or enclosed vehicles.

(3) Any use or trade, which, though properly and safely operated with ordinary care, according to good and reasonable practice, causes noxious or offensive odors, gas, fumes, smoke, dust or vibration or noise which substantially interferes with other uses of property permitted in the district; provided that

nothing in this section shall be construed to exclude from this district any of the following:

a. Railroads and their:
   Tracks
   Yards
   Terminals
   Shops
   Roundhouses
   Accessories and appurtenances
b. Public utilities and their:
   Power plants
   Electric substations
   Transformers
   Gas plants
   Gas holders
   Sewage disposal plant
   Pumping stations
   Water supply installations
   Water tower, tanks
   Reservoirs
   Filtration or other water purification facilities
   Transportation facilities
   Shops
   Accessories and appurtenances
   Incinerators

(4) Dwellings or residences of any type except:

a. The residence of a caretaker or watchman; or
b. An alteration to an existing dwelling which changes the dwelling without adding another family unit.

(5) Signs prohibited in section 10-2065.5, and signed which do not conform to either 10-2065 et seq. or 10-2066 et seq.

(6) Unless expressly provided otherwise, the standards for special use exceptions such as 10-2073(c)(15),

and the standards for conditional use exceptions, such as 10-2033(h), are applicable in industrial zoning districts.

(c) Nothing in this section shall be construed to regulate or to exclude from an industrial I district a publicly owned sanitary landfill site or sites devoted to the following uses among other:

(1) The disposal of solid waste pursuant to all applicable state and local standards and regulations.

(2) The incidental and accessor reclamation of solid waste by a public or private agency.

Sec. 10-2047. Industrial II district; permitted uses.

The use regulations in an industrial II district are the same as the use regulations in an industrial I district. The only difference between the two (2) districts is the minimum yard space requirements established by section 10-2063 of the Code.

APPENDIX B

RALEIGH CITY CODE

Sec. 10-2065.6 Nonconforming signs.

(a) Within ninety (90) days after the effective date of this chapter:

(1) Any existing nongovernmental flashing sign shall stop flashing;

(2) Any portable sign, banner or windblown sign not authorized by section 10-2065.2(g)(1) shall be removed;

(3) Any existing sign which mechanically moves shall cease its movement;

(4) Any message, copy of announcement which uses a series of two (2) or more signs following one another placed parallel to a street or highway carrying a single message, copy, or announcement part of which is contained on each sign shall terminate.

(b) Nothing in this chapter shall prevent the ordinary maintenance repair of a nonconforming sign or replacement of a broken part of a nonconforming sign. Whenever any nonconforming sign, or part thereof is altered, replaced, converted or changed, the entire sign must immediately comply with the provisions of this Code.

(c) Nonconforming signs which are destroyed or damaged by fifty (50) percent or more of their value shall not be rebuilt or repaired except in conformance with this Code.

APPENDIX C

RALEIGH CITY CODE

Sec. 10-2066.2 Specific outdoor advertising sign regulations.

Outdoor advertising signs and structures which comply with the provisions of this Code are permitted in any industrial zoning district provided the specific sign location is four hundred (400) feet or more from any zoning district which allows any dwelling unit.